SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1029

MRS. LOUISE HARRIS MOORE,

Petitioner,

vs.

THE UNITED STATES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinion of the Court Below.

The opinion of the court below is reported in 37 Fed. Sup. 137.

II.

Jurisdiction.

1. It is believed the Court has jurisdiction under the following statutory provision:

28 U. S. C. A. 288 (Feb. 13, 1925, c. 229, Sec. 3, 43 Stat. 939).

2. The judgment dismissing the petition was entered March 3rd, 1941 (R. 12).

3. The decision involves a construction of Federal Law.

4. It is believed jurisdiction to review the decision is sustained by the case of *Sun Shipbuilding Company* v. *U. S.*, 271 U. S. 96.

III.

Statement of the Case.

A concise statement of the case is in the petition for certiorari. It is adopted and for brevity it is not repeated.

IV.

Specification of Errors.

1. The court erred in finding and holding that the word "Joint" in Section 51B (2), Revenue Act of 1932 (47 Stat. 169, 188), means that both spouses are liable for the resulting tax.

2. The court erred in holding that the tax assessed against petitioner is authorized by law.

3. The court erred in finding and holding that petitioner is not entitled to recover the amount paid, and in dismissing her petition.

V.

Argument.

As to petitioner, the amount assessed and collected is not a tax. The Revenue Act of 1932 contains no provisions specifically authorizing the assessment of the tax or the deficiency against petitioner. The joint income tax return was filed by the husband and not by petitioner.

The court below concludes that petitioner could not allow her husband to file a joint return and include her gross

income and losses without becoming liable for the tax. It concludes that the word "Joint", in the context of the quoted part of the applicable statute, is that both spouses should be liable for the resulting tax, independent of the income of either spouse. It is obvious that the court below has based its decision upon the language of this Honorable Court in the case of *Taft* v. *Helvering*, 311 U. S. ——, 61 S. Ct. 244 (Decided December 9, 1940), in which this Court held that the joint return is to be treated as a "taxable unit" as though it were made by a "single individual", in the computation of the tax. The question of "taxable unit" as applied to the assessment and collection of the tax was not presented.

The decision below is in conflict with decisions of the United States Circuit Courts of Appeals in the Second, Sixth, Seventh and Ninth Circuits in the following cases:

Cole v. *Commissioner* (C. C. A. 9), 81 F. (2d) 485;
Crowe v. *Commissioner* (C. C. A. 7), 86 F. (2d) 796;
Commissioner v. *Rabenold* (C. C. A. 2), 108 F. (2d) 639, 641;
Sachs v. *Commissioner* (C. C. A. 6), 111 F. (2d) 648.

The question here presented is an important question of Federal law which has not been settled by this Court, and which we submit should be settled.

The decision below is probably in conflict with applicable decisions of this Court on general principles of law. In the case of *Gould* v. *Gould*, 245 U. S. 151, this Court held that doubt in taxing statutes should be resolved in favor of the taxpayer and against the tax. The authority to make the assessment against the wife must be implied from the context of the statute.

It is thought that the construction given the applicable Section of the statute by the court below would probably make it unconstitutional, in that it would authorize the

assessment of a tax due on one person's income against another. As to petitioner, if the amount be a tax, it would be direct taxation without apportionment, because petitioner had no taxable income. *Pollock* v. *Farmers Loan and Trust Company,* 157 U. S. 429.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers to review the decision of the Court of Claims of the United States and finally reverse it.

J. C. Murphy,
Counsel for Petitioner.

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Atlanta, Georgia.

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 74

MRS. LOUISE HARRIS MOORE, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

This case raises the question whether the Commissioner of Internal Revenue may assess an income tax deficiency against either spouse for the year 1932 where husband and wife have filed joint returns, or, in other words, whether spouses who have filed joint returns are jointly and severally liable for the tax. The holding of the court below that either spouse may be called upon to pay the tax is, as asserted by petitioner, in conflict with *Cole* v. *Commissioner,* 81 F. (2d) 485 (C. C. A. 9th); *Crowe* v. *Commissioner,* 86 F. (2d) 796 (C. C. A. 7th); *Commissioner* v. *Rabenold,* 108 F. (2d) 639 (C. C. A. 2d); *Sachs* v. *Commissioner,* 111 F. (2d) 648 (C. C. A. 6th).

Notwithstanding the conflict, however, this Court would be justified in denying certiorari. Congress, recognizing the incorrectness of the result reached in those cases, made a clarifying change in Section 51 (b) of the Revenue Act of 1938, expressly providing for joint and several liability. There are few, if any, cases still pending which raise this question for the years prior to 1938. Moreover, the subsequent decisions of this Court in *Helvering* v. *Janney,* 311 U. S. 189, and *Taft* v. *Helvering,* 311 U. S. 195, go far towards depriving the earlier conflicting decisions of controlling effect even in the circuits in which they were decided.

In these circumstances, it would seem appropriate that the petition should be denied.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

JUNE 1941.

U. S. GOVERNMENT PRINTING OFFICE: 1941

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 74

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

In the Government's memorandum heretofore filed in this case, it was suggested that although a conflict existed the Court would be justified in denying certiorari, since the statute had been clarified in 1938 and since there were few if any cases pending which involved prior years.

In response to our request the Treasury has since examined its assessment lists for tax years prior to 1938, and has found that on March 31, 1941, there were approximately 869 assessments in the joint names of husband and wife outstanding for pre-

1938 tax years involving an aggregate tax liability of $2,793,649.86. Although it is difficult to determine how many of those assessments may result in litigation raising the question of the instant case, it does seem likely that there is sufficient potential litigation to warrant granting the writ here.

Respectfully,

CHARLES FAHY,
Acting Solicitor General.

JULY 1941.

U. S. GOVERNMENT PRINTING OFFICE: 1941